

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BERNHARDT TIEDE, II,
Plaintiff,

v.

BRYAN COLLIER, ET AL.,
Defendants.

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CIVIL ACTION NO. 1:23-CV-01004

DEFENDANTS TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND BRYAN
COLLIER'S MOTION TO DISMISS PURSUANT TO FEDERAL RULE 12(B)(1)

Exhibit A

TDCJ Administrative Directive 10.64 (Heat Policy)



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

NUMBER: AD-10.64 (rev. 10)

DATE: May 8, 2020

PAGE: 1 of 16

SUPERSEDES: AD-10.64 (rev. 9)
March 26, 2018

ADMINISTRATIVE DIRECTIVE

SUBJECT: EXCESSIVE AND EXTREME TEMPERATURE CONDITIONS IN
THE TDCJ

AUTHORITY: Tex. Gov't Code §§ 493.001, 493.006; BP-02.08, "Statement of Internal
Controls"

Reference: TDCJ *Risk Management Program Manual*; CMHC D-27.2, "Heat
Stress"

APPLICABILITY: Texas Department of Criminal Justice (TDCJ)

POLICY:

The TDCJ shall establish guidelines to assist unit administration in adapting offender housing areas and work assignments during excessive or extreme temperatures. Guidelines for outside recreation are found in the *Recreation Program Procedures Manual*.

Every reasonable effort shall be made to prevent injuries related to excessive or extreme temperatures in the TDCJ. TDCJ offenders may be required to work in conditions of excessive heat or extreme cold when situations occur requiring specific work be completed regardless of the temperature or weather conditions. The decision to require offenders to work in excessive heat or extreme cold temperatures shall be made by the warden and applicable departmental supervisors in order to address the conditions specific to the area in which the facility is located.

The TDCJ shall work closely with health care staff to immediately identify offenders at risk from excessive or extreme temperatures. Incidents related to excessive or extreme temperatures shall be reported to TDCJ administration.

DEFINITIONS:

The following terms are defined for the purpose of this policy and are not intended to be applicable to other policies or procedures.

"Excessive Heat" occurs from a combination of significantly higher than normal temperatures and high humidity.

“Excessive Heat Warning” is issued by the National Weather Service within 12 hours of the onset of the following criteria: temperature of at least 105°F for more than three hours per day for two consecutive days, or heat index of 113°F or greater for any period of time.

“Extreme Cold” refers to temperatures at or below freezing for an extended period of time.

“Heat Index,” also referred to as the “apparent temperature,” is a measure of how hot it actually feels when the relative humidity (RH) is added to the actual air temperature.

“Heat Restriction List” is a list of offenders with restrictions related to physical activities, transportation, and work that have been entered in the Restrictions Module of the electronic health record (EHR) and transmitted to the TDCJ mainframe HSIN screen.

“Heat Wave” is a prolonged period (three or more days) of excessively hot and unusually humid weather that meets the following criteria: temperature of at least 105°F or heat index of 113°F.

“Relative Humidity” is a dimensionless ratio, expressed in percent, of the amount of atmospheric moisture present relative to the amount that would be present if the air were saturated. Since the latter amount is dependent on temperature, relative humidity is a function of both moisture content and temperature.

“Risk Category” means the TDCJ has received notice of a Heat Advisory, Special Weather Statement, or Excessive Heat Warning issued by the National Weather Service.

“Wellness Check” is when a correctional officer performing routine security rounds goes to an offender’s cell or bunk to visually inspect or observe the offender due to the offender previously being identified as having a condition or being on a medication that makes the offender more susceptible to temperature-related issues.

“Wind Chill” is a quantity expressing the effective lowering of the air temperature caused by the wind, especially as affecting rate of heat loss from an object or human body, or as perceived by an exposed person.

PROCEDURES:

Before requiring offenders to work in excessive or extreme temperature conditions, the warden and applicable departmental supervisors shall ensure appropriate measures are taken to prevent excessive or extreme temperature-related injuries, including consulting health care staff to identify specific hazards. In all cases of temperature-related incidents or injuries, unit health care staff and the unit risk manager shall be immediately notified. Staff shall remove the distressed offender from the environment by the most expeditious means available to receive proper medical treatment.

I. Monitoring Procedures

Procedures and exposure charts, Wind Chill Index (Attachment A), and Heat and Humidity Index (Attachment B), are provided to assist unit administration in determining safe conditions and applicable risk categories in excessive or extreme temperatures.

- A. Unit staff shall monitor and announce over the radio the temperature, heat index or wind chill, and risk category once every hour between 12:30 a.m. and 11:30 p.m. The outside air temperature, humidity or wind speed, and heat index or wind chill shall be documented 24 hours a day on the Temperature Log (Attachment C).
 - B. Temperature Log
 - 1. The warden shall designate a central location to maintain the Temperature Log.
 - 2. The wind chill or heat index shall be documented on the Temperature Log.
 - 3. Temperature information is available through the following:
 - a. The National Oceanic and Atmospheric Administration (NOAA) website (www.noaa.gov);
 - b. NOAA Weather Radio;
 - c. Local weather radio and television stations; or
 - d. Onsite weather instrumentation.
 - 4. Temperature Logs shall be maintained in accordance with the TDCJ *Records Retention Schedule*.
- II. Extreme Cold Conditions
- A. Determination
 - 1. The warden shall use the Wind Chill Index, the local news and weather media, and weather conditions recorded by instruments located at the unit to determine the safety of cold weather working conditions.
 - 2. Clothing considered appropriate for offenders working in cold weather includes thermal underwear, insulated jackets, cotton or leather gloves, insulated hoods, work shoes, and socks. Appropriate clothing shall be issued even when the Wind Chill Index indicates little danger of exposure injury.
 - 3. If additional guidance is needed, health care staff, the unit risk manager, or the assistant unit risk manager shall be consulted to assist in determining appropriate clothing and footwear needed to prevent cold injury.
 - 4. Care shall be taken to prevent perspiration, which could soak clothing and thus compromise the insulating value of the clothing.
 - 5. Layers of clothing shall be removed or added according to the temperature and level of physical activity.

B. Symptoms

1. Hypothermia is a condition occurring when the body loses heat faster than it can produce heat. With the onset of this condition, blood vessels in the skin tighten to conserve vital internal body heat, affecting the hands and feet first.
2. If the body continues to lose heat, involuntary shivers begin. This reaction is the way the body produces more heat and is usually the first real warning sign of hypothermia.
3. Further heat loss produces speech difficulty, forgetfulness, loss of manual dexterity, collapse, and possibly death.

III. Excessive Heat Conditions**A. Determination**

1. The warden shall use the Heat and Humidity Index, the local news and weather media, and weather conditions recorded by instruments located at the unit to confirm temperature and humidity conditions in order to determine if an excessive heat condition is occurring.
2. When the National Weather Service issues an excessive heat warning or notice of an impending heat wave, the TDCJ Office of Emergency Management shall send the applicable division directors an email notification. When excessive heat conditions last for more than three consecutive days, the division directors and warden(s) of units in the affected area(s) shall immediately implement additional precautionary measures, as outlined in Section IV.I of this directive.
3. At any point when the Heat and Humidity Index indicates the possibility of heat exhaustion, the warden shall instruct the appropriate staff to immediately initiate the precautionary measures identified in the Heat and Humidity Index.
4. If additional guidance is needed, health care staff, the unit risk manager, or assistant unit risk manager shall be consulted before exposing offenders to excessive heat conditions in the work area to evaluate the hazards of the current temperatures and humidity, including indoor work areas, such as a boiler room. The hazard of sunburn and other results of ultraviolet (UV) radiation exposure shall also be closely monitored. Offenders shall be provided and required to wear clothing appropriate for the temperatures and hazards imposed by UV radiation. For example, light-colored hats can be used to an advantage in high heat and direct sunlight.
5. Drinking water and cups shall always be available to offenders in conditions of excessive heat. A cup will be provided to all indigent and newly received offenders, and any offender who does not have a personal cup. Offenders will be permitted to have one cup in their possession. High water intake shall be encouraged during periods of excessive heat and depending on an offender's state of acclimatization to hot weather conditions, liquids containing sodium

may also be used. Offenders and staff working at apparent air temperatures above 90°F shall be provided access to and encouraged to consume water before their work assignment and as needed during the workday and should maintain an intake of at least 16 ounces of fluids per hour of work. Under excessive heat conditions, work should be interrupted every 15-20 minutes and offenders encouraged to drink fluids even if they are not thirsty.

6. Offenders newly assigned to jobs that require strenuous work under conditions with an apparent air temperature of 90°F or greater must be acclimatized before assuming a full workload. These offenders shall work no more than four hours at a time, separated by at least one hour of rest in a cooler environment, for the first week. After the first week, offenders newly assigned to jobs may assume a normal work schedule. Acclimatization can be lost in as little as two weeks; therefore, if offenders are away from a hot work environment for more than two weeks, they shall be reacclimatized. Acclimatization is not necessary for individuals assigned to the same job when temperatures vary with seasonal changes.
7. TDCJ and health care staff shall work together to identify offenders susceptible to temperature-related illness due to medical conditions. As offenders arrive on intake facilities, a staff member from the medical department shall conduct an initial screening to determine if the offender has any conditions or is on any medication that would make the offender more susceptible to heat. If health care staff determines an offender has a condition or is on a medication that would make the offender more susceptible to heat, correctional staff shall perform wellness checks, as outlined in Section IV.C-D on the offender.

B. Symptoms

1. Heat cramp symptoms include:
 - a. Painful, intermittent, and involuntary muscle spasms following hard physical work in a hot environment; and
 - b. Cramps usually occurring after heavy perspiring, and often beginning at the completion of hard physical work.
2. Heat exhaustion symptoms include:
 - a. Profuse perspiration, weakness, rapid pulse, dizziness, and headaches;
 - b. Cool skin, sometimes pale and clammy, with perspiration;
 - c. Normal or subnormal body temperature; and
 - d. Possible nausea, vomiting, and unconsciousness.

3. Heatstroke symptoms include:
 - a. Diminished or absent perspiration (sweating);
 - b. Hot, dry, and flushed skin; and
 - c. Increased body temperatures, which if uncontrolled, may lead to delirium, convulsions, seizures, and possibly death. Medical care is urgently needed.

IV. Preventive Care and Precautions

- A. Before April 15th each year, wardens shall review with unit staff the status of HVAC units, shower temperatures, fans, ice machines, ventilation systems, exhaust fans, and respite areas throughout the unit. Wardens shall coordinate with unit maintenance staff to prioritize maintenance work orders for these areas and immediately address any deficiencies.
- B. Offenders incarcerated within the TDCJ shall be assessed for medical and mental impairments by qualified health care staff who will assign each offender appropriate restrictions related to physical activities, transportation, and work. Appropriate limitations and restrictions shall be assigned and entered in the Restrictions Module in the electronic health record (EHR). The latter is automatically transmitted to the TDCJ mainframe HSIN screen.
- C. Once an offender is identified as at-risk, health care staff shall notify unit countroom staff and update the offender's HSIN accordingly. Countroom staff shall then make any necessary changes to the offender's housing or work assignment and notify correctional staff if an adjustment is necessary.
- D. During each security round, staff shall use the Heat Restriction List to conduct wellness checks for offenders on that list. Staff shall immediately seek care for any and all offenders requesting medical assistance or exhibiting signs of illness, even if they are not listed on the Heat Restriction List.
- E. Offenders shall be allowed access to respite areas during periods of excessive heat.
 1. Offenders may request access to a respite area 24 hours per day, seven days per week, even if they are not feeling ill at the time of the request or the request is made during count time.
 2. Offenders requesting access to a respite area are not required to be seen by health care staff unless they are exhibiting signs or symptoms of a heat-related illness.
 3. Offenders shall be permitted to stay in the respite area as long as necessary and may bring cups, hydrating drinks such as water and electrolyte sports drinks, electrolyte packets, cooling rags, and reading materials.

4. Any area with air conditioning may be used for respite, as determined by the warden. Signage in English and Spanish shall be posted informing offenders of the areas designated as respite areas.
 5. The warden or designee shall determine the order of use for respite areas, ensuring areas capable of accommodating the greatest number of offenders are utilized first, while maintaining the safety and security of the unit.
 6. Offenders shall not be permitted to choose the respite area to which they will have access.
- F. Representatives from various divisions shall meet annually to review best practices concerning preventive care and precautions with excessive or extreme temperatures. A mainframe and email message titled, "Seasonal Preparedness Directive," shall be sent from the executive director. The Correctional Institutions Division (CID) director and the Private Facility Contract Monitoring/Oversight Division (PFCMOD) director shall inform unit wardens of additional mandatory compliance measures in the prevention of cold- and heat-related injuries and illness.
- G. Training will be conducted at units as outlined in Section VII.
- H. In situations where the heat index is above 90°F, units will initiate the following steps:
1. Provide additional water and cups in offender dorms, housing areas, recreational areas, and during meal times, along with ice;
 2. Transport psychiatric inpatient offenders to other facilities via air-conditioned transfer vehicles only;
 3. Transport offenders during the coolest hours of the day, when possible;
 4. Allow offenders to utilize and carry cooling towels;
 5. Allow offenders to wear shorts and t-shirts in dayrooms and recreational areas;
 6. Prioritize work orders and ensure maintenance for air-conditioning units, HVAC systems, fans, blowers, and showers in offender housing areas;
 7. Ensure all staff currently have, or are provided with a FN-1181, Employee Information Pocket Card, obtained through the Prison Store and available at the units, and that the cards are carried on their person while at the unit;
 8. Allow additional showers for offenders when possible. Lower the water temperature for single temperature showers in offender housing areas;

9. Place posters in housing areas reminding offenders of heat precautions and the importance of water intake, ensuring all posters that have been damaged or destroyed are replaced; and
 10. Allow fans for offenders in all custody levels, to include restrictive housing and disciplinary status where electrical outlets are available. Ensure fan program is in place allowing the permanent issuance of fans to indigent offenders. Fans shall only be confiscated if altered or stolen.
- I. In addition to the precautions outlined in Section IV.H of this directive, the warden shall instruct the appropriate staff to immediately implement the following precautionary measures when excessive heat or heat wave conditions last more than three consecutive days:
1. Initiate the Incident Command System (ICS) and immediately notify the appropriate regional director and the deputy director of Prison and Jail Operations for CID units, or the appropriate deputy director for the Private Facility Contract Monitoring/Oversight Division (PFCMOD) for privately operated units, and the emergency management coordinator of the impending excessive heat conditions;
 2. Restrict, and potentially cancel, outside work and recreation;
 3. Reduce kitchen and dish room operations as needed. Offenders may be served cold cuts and other food items that do not require heating, as conditions warrant;
 4. Minimize laundry operations during afternoon hours. To the extent possible, begin washing and drying in the earlier, cooler hours of the morning in order to be completed by noon; and
 5. Permit offenders to purchase electrolyte sports drinks from the unit commissary without affecting their spending limit.
- J. When conditions giving rise to the excessive heat warning cease, the warden may deactivate the ICS, with the approval of the appropriate regional director for CID units, or the appropriate deputy director for PFCMOD for privately operated units. The emergency management coordinator shall be notified when the ICS is deactivated.

After deactivating the ICS for an excessive heat warning, the warden shall assess the unit's readiness to return to normal operations, taking into consideration any actions that could improve operations during future incidents of a similar nature and identifying any training needs.

V. Offenders with Heat Sensitivity Scores

The agency recognizes that some offenders are potentially at a heightened risk of heat-related illnesses because of their age, health conditions, or medications. These offenders are identified

through an automated heat sensitivity score that uses information from the offender's EHR. Heat sensitivity scores are updated daily with changes to the EHR. For newly received offenders, health services staff use an intake heat sensitivity form to screen offenders as soon as they arrive. When new offenders receive their physical examination, their score is updated automatically. Offenders who have a heat sensitivity score receive priority placement in a housing area that is air-conditioned. Offenders identified as Pack Unit Class Members shall be managed in accordance with AD-03.05, "Offenders Identified as Pack Unit Class Members."

VI. Emergency Treatment

Staff shall monitor and seek care for offenders requesting medical assistance or exhibiting signs of illness during periods of excessive or extreme temperatures.

- A. In all cases of temperature-related incidents or injuries, the first aid process shall be immediately initiated by correctional or other unit staff.
 1. If an injury is sustained in extreme cold conditions, staff shall:
 - a. Bring the distressed offender out of the cold and restrict any further duties or activities until the severity of the injury is evaluated.
 - b. Remove any wet clothing and insulate the offender with dry, warm blankets or clothing, ensuring all constricting items of clothing and footwear are removed from injured areas and the injured areas are covered.
 - c. If frostbite exists, gently heat the affected area with warm water or towels, a heating pad, or hot water bottles. Do not rub the affected area or rupture blisters.
 - d. If a lower extremity is affected, treat by slightly elevating the affected area.
 - e. If the offender is conscious, encourage consumption of warm, sweetened liquids.
 - f. If necessary, initiate lifesaving measures.
 - g. If evacuation from cold requires travel on foot, do not thaw the affected area until the offender reaches medical help.
 - h. Transport the offender to medical care as soon as possible and continue treatment after arriving at the site or when the offender is delivered to health care staff's care.

2. If an injury is sustained in excessive heat conditions, staff shall:
 - a. Immediately begin an attempt to decrease the offender's temperature by placing the offender in a cool area.
 - b. Force oral fluid intake only if the offender is conscious and able to safely swallow.
 - c. Remove heavy clothing or excess layers of clothing; saturate remaining lightweight clothing with water. Position the offender in the shade, allowing air movement past the offender, and if necessary, fan the offender to create air movement.
 - d. If ice is available, place ice packs in armpit and groin areas.
 - e. Take all these measures while moving the offender in the most expeditious means available to continue with and obtain proper medical treatment.
 - f. Ensure, whenever health care staff are on-site, treatment is continued as directed by the physician or health care staff.

B. Notification

1. Health care staff and the unit risk manager shall be immediately notified regarding all cases of temperature-related incidents or injuries. If there is no on-site health care staff, 911 shall be immediately called.
2. Any temperature-related incident or injury shall be reported to the Emergency Action Center in accordance with AD-02.15, "Operations of the Emergency Action Center and Reporting Procedures for Serious or Unusual Incidents."
3. All heat-related illnesses shall be evaluated by staff to include the conditions surrounding the offender, such as water intake, location, and what the offender was doing before becoming ill. Any "cluster illnesses" or illnesses occurring in offenders in the same housing areas shall be documented and reported to the CID director or the PFCMOD director.

VII. Training

A. Annual Training

1. A standardized training program shall be developed by the TDCJ in conjunction with the University of Texas Medical Branch Clinical Education Department. Each unit shall be provided a copy of the training program in the form of a DVD to facilitate the required training.
 - a. The training shall be given in a group setting, when possible.

- b. All units shall conduct an annual standardized training program using unit-based health care staff.
 - c. The facility health administrator for each unit shall submit documentation of excessive heat and extreme cold temperature training for TDCJ staff, health care staff, and offenders to the Health Services Division Office of Health Services Monitoring annually by April 15th (heat) and October 1st (cold).
- 2. Each warden shall ensure training in the prevention of injuries due to excessive or extreme temperatures is provided by unit health care staff to all supervisors designated by the warden. Training concerning excessive heat shall be completed no later than April 15th, and training concerning cold extremes shall be completed in September of each year.
 - a. Supervisors shall train staff and work-assigned offenders.
 - b. Unit administration shall ensure, through the unit risk manager, that offenders who are not work-assigned are trained.
 - c. All offenders shall be notified of cold and heat awareness via Peer Education training, dayroom bulletin boards and other common use areas, or through publications such as the I-204, "Incoming Offender Heat, Cold, Safe Prisons/PREA, and Suicide Prevention" flyer; *The Echo*; or the *TDCJ Offender Orientation Handbook*.
- 3. Training shall be documented as outlined in the *TDCJ Risk Management Program Manual*. Documentation of completed training shall be maintained by the facility health administrator. Copies of all rosters from staff training shall be provided to the human resources representative and unit risk manager. The unit risk manager shall forward a copy of the training roster to the respective regional risk manager. Training rosters for privately operated facilities shall also be forwarded to the office of the director of the PFCMOD.

The regional risk manager shall forward the total number of staff and offenders trained to the Risk Management Central Office.

B. Pre-Service, On-the-Job, and In-Service Training

- 1. Staff shall be provided with initial training regarding excessive or extreme temperature conditions as part of the Pre-Service Training Academy.
- 2. Additional training shall be provided during the On-the-Job Training Program and annual In-Service Training sessions.

C. Additional Training

1. Staff Training

- a. Each unit shall be provided with a DVD to facilitate ongoing excessive or extreme temperature conditions training sessions.
- b. The training DVD shall be reviewed annually by the Communications Department to ensure the information is accurate and up to date.
- c. This training shall be conducted on a regular and frequent basis during shift turnout, departmental meetings, or other similar times.
- d. Human Resources staff shall ensure the training is documented in the TDCJ Training Database. PFCMOD shall ensure documentation is completed and maintained for all privately operated facilities.
- e. Heat training shall be conducted beginning in March and ending in November. If the need arises based on forecasted temperatures, training may be conducted before March and after November.
- f. Cold training shall be conducted beginning in September and ending in February. If the need arises based on forecasted temperatures, training may be conducted before September and after February.

2. Offender Training

- a. Offenders shall be provided with training regarding excessive or extreme temperature conditions as part of the Offender Peer Education Program during intake and upon transfer to their unit of assignment.
- b. Each unit shall be provided with a DVD to facilitate ongoing excessive or extreme temperature conditions training sessions.
 - (1) The training DVD shall be reviewed annually by the Communications Department to ensure the information is accurate and up to date.
 - (2) The training DVD shall be played on dayroom and common area TVs on a regular and frequent basis.
 - (3) The unit risk manager shall ensure the training is documented within the Individual Treatment Plan for each offender.
 - (4) Offenders shall be provided with an I-204, "Incoming Offender Heat, Cold, Safe Prisons/PREA, and Suicide Prevention" flyer and provided with unit-specific heat mitigation measures upon arrival at a new unit.

- c. Heat training shall be conducted beginning in March and ending in November. If the need arises based on forecasted temperatures, training may be conducted before March and after November.
- d. Cold training shall be conducted beginning in September and ending in February. If the need arises based on forecasted temperatures, training may be conducted before September and after February.

VIII. Reporting of Offender Deaths

Offender deaths during periods of excessive or extreme temperatures, when the cause of death is unknown, shall be documented as cause pending until ruled otherwise by an autopsy or subsequent evaluation. An administrative incident review is required for all offender deaths, except natural cause attended deaths, in accordance with AD-02.15, during a period of excessive or extreme temperatures until affirmatively reclassified as a natural death.

Bryan Collier*
Executive Director

* Signature on file